

David K. Byers, Director  
Administrative Office of the Courts  
1501 W. Washington St.  
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULES 47, 48, )  
50, 56, 57, 65 and 72, )  
ARIZONA RULES OF SUPREME COURT )  
\_\_\_\_\_)

Supreme Court No. R-09-

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the proposed amendments to Rules 47, 48, 50, 56, 57, 65, and 72 of the Arizona Rules of the Supreme Court governing the processing of formal complaints against attorneys and the reinstatement procedure after suspension or disbarment.

**I. Background and Purpose of the Proposed Amendments.** The proposed changes are intended to assist in the ongoing effort to improve the attorney discipline system through the efficient, timely and fair resolution of complaints. The proposed amendments build upon the improvements made to the system to date. In 2006 the Court authorized a pilot program for the appointment of Judge Jeffrey Coker as a paid hearing officer and directed Judge Coker to submit recommendations on further improvements to the attorney discipline system. These proposed rule changes incorporate Judge Coker's final recommendations and also those of the supreme court staff.

**II. Contents of the Proposed Amendments.** The proposed changes to Rule 47 provide for efficient processing of complaints by establishing a timeframe for the submission of the certified transcript of a hearing and allowing for electronic submission of the transcript. The amendments specify the costs of the certified reporter and the transcript shall be included in the costs of adjudication assessed against the respondent. The changes also authorize the disciplinary clerk to issue a subpoena upon request of the state bar, respondent or respondent's counsel and allows any hearing officer to rule upon a request, regardless of whether the hearing officer is assigned to conduct the hearing in the complaint. Allowing any hearing officer to rule upon the request will provide for timely processing of the request in those situations where contacting the hearing officer appointed to the case is delayed.

The current provisions in Rule 48 provide immunity from civil suit for state bar staff. Amendments are proposed to provide this same immunity to supreme court staff, including, for example, the disciplinary clerk and staff.

Utilizing both paid and volunteer hearing officers assists in an efficient, fair and timely disciplinary process. The proposed changes to Rule 50 implement Judge Coker's recommendation that paid hearing officers be utilized on an ongoing basis, in addition to the cadre of experienced volunteer hearing officers. The disciplinary clerk currently assigns cases to paid and volunteer hearing officers based on a number of factors, including the complexity of the case, current workload of each hearing officer, the law practice demands of the volunteer hearing officers, the number of complaints filed each month and the pending number and time performance of formal disciplinary complaints in the hearing stage. In consideration of these factors, utilization of both paid and volunteer hearing officers provides for efficient assignment and processing of the cases and creates the opportunity for the disciplinary clerk to primarily

assign complex cases and those cases requiring multiple days of hearings to the paid hearing officers. Both paid and volunteer hearing officers may be used as settlement officers.

Under the current Rule 50, each party is entitled to one change of hearing officer as a matter of right. Abuses of this right can significantly impact the efficient processing of the complaint. The proposed changes require the requesting party to include in the Notice of Transfer an avowal the request is being made in good faith. These changes are modeled after Rules of Criminal Procedure 10.2 and preserve the right of each party to request a new hearing officer while also addressing abuses of the rule, including “blanket challenges” of hearing officers.

The proposed amendments to Rule 56 require the hearing officer to hold a hearing in every Tender of Admission case. Under the current rule the hearing officer can simply review the Tender and then prepare and file the hearing officer report. Requiring a hearing in every case will result in substantiation of the factual basis for the Tender and reduce the necessity of the Disciplinary Commission remanding the Tender back to the hearing officer. The Rule 56 amendments also incorporate a recommendation from Judge Coker for reduction of the volume of exhibits and witnesses at hearing. These provisions are also contained in the amendments to Rule 57.

Rule 57 incorporates in rule the current timeframe that requires the state bar to file the complaint or agreement within sixty days from the probable cause order. Incorporating this timeframe in the rule will assist in emphasizing to the Respondent the seriousness of the matter and that the complaint will be processed timely. Proposed changes to the timeframes for service of the complaint in Rule 57 recognize that in most cases, the state bar accomplishes service by depositing the complaint in the mail. Therefore, completion of service by deposit in the mail

within the new timeframe of five days can be accomplished in most cases. The rule provides for additional time for those cases where personal service is necessary or there is some other delay in accomplishing service. Service of the complaint impacts the timely processing of the case and therefore should be accomplished as soon as possible after the filing. The amendments also incorporate a current procedure where the Notice of Assignment of Hearing Officer includes notice of the date and time of the initial case management conference. This procedure has proven to have a positive impact in engaging the Respondent and the timely processing of the case.

The proposed new timeframes in Rule 57 for scheduling and completion of the hearing recognizes that in most cases, the hearing can be concluded within one hundred and twenty days. The changes to the rule also provide clarification regarding the request for designation of a case as complex and the timeframes that apply to these cases. Clarification is provided regarding appeal of the hearing officer's report in a Discipline by Consent case, to avoid any confusion with Rule 56.

Holding the hearings in Maricopa County, as opposed to the Respondent's county of residence or location of law office will assist in the timely processing of cases and ensure the disciplinary clerk's staff can provide the necessary support to the hearing officer. The proposed amendments suggest that the hearing could be held in a county other than Maricopa County upon a determination by the hearing officer the principles of forum non conveniens apply.

The amendments to Rule 65 governing reinstatement are intended to clarify that the filing date is upon receipt of the application and application fee, even in those cases where the application may be incomplete because it does not meet all the requirements of Rule 65. Clarity regarding the date of filing the application is critical because of the current language in Rule 64

specifies that a lawyer who has been on disability inactive status or suspended for a period of five years or disbarred at the time an application for reinstatement is filed must also apply for admission and pass the bar examination. The amendments also propose that oral arguments before the Disciplinary Commission are not mandatory in those cases where the applicant was summarily suspended by the Board of Governors.

An amendment to Rule 72 is proposed to require the respondent to file the compliance affidavit with the state bar in addition to filing with the Commission and the Court.

RESPECTFULLY SUBMITTED this 9th day of January, 2009.

By \_\_\_\_\_

David K. Byers, Director  
Administrative Office of the Courts  
1501 W. Washington St.  
Phoenix, AZ 85007

## PROPOSED RULES 47, 48, 50, 56, 57, 65, 72 RULES OF THE SUPREME COURT

### **Rule 47. Rules of Procedure**

(a) – (e) [No proposed change in text.]

(f) **Administration of Oaths.** Oaths and affirmations in discipline, disability and reinstatement proceedings shall be administered by the hearing officer or certified ~~court~~ reporter.

(g) **Transcript of Hearings.** The disciplinary clerk shall cause a record to be made, by certified ~~court~~ reporters or electronic means, of all evidentiary hearings and oral arguments or upon request of the hearing officer or the parties. Testimony recorded by electronic means is admissible for the same purposes as transcripts. Within fourteen (14) days after ~~After~~ the conclusion of each evidentiary hearing or oral argument ~~in a contested case, the~~ disciplinary clerk shall obtain and file one (1) copy of the certified ~~written~~ transcript of the hearing and serve a copy on the hearing officer, state bar and respondent. The disciplinary clerk may obtain and serve the transcript by electronic means. ~~A written transcript of an evidentiary hearing before a hearing officer that involves a tender of admissions and agreement for discipline by consent may be secured and filed by the disciplinary clerk only upon the request of the hearing officer, the respondent or the state bar, the commission or the court.~~ The disciplinary clerk ~~may~~ shall also cause a record to be made of meetings and oral arguments before the commission. The costs to the disciplinary clerk of the services of a certified ~~court~~ reporter and certified transcripts ~~may~~ shall be included in the costs of adjudication that are assessed against the respondent pursuant to Rule 60(b).

(h) **Subpoena Power.** Except as otherwise provided, all hearing officers and the disciplinary clerk shall have the power to issue subpoenas.

1. *Investigative Subpoenas.* [No proposed changes in text.]

2. *Hearing Subpoenas.* After filing of a complaint, subpoenas shall be issued by a hearing officer or the disciplinary clerk upon written request of the state bar, respondent or respondent's counsel, as provided above. A subpoena may be issued by any hearing officer, regardless of whether the hearing officer is assigned to conduct the hearing in the complaint.

3. - 7. [No proposed changes in text.].

### **(i) Supoenas; Form.**

1. Subpoenas for the attendance of witnesses and the production of books and records shall be in substantially the following form:

BEFORE A HEARING OFFICER  
(HEARING OFFICER NO. \_\_\_\_\_)  
(THE PROBABLE CAUSE PANELIST)

In the Matter of a Member )  
of the State Bar of Arizona )  
 )  
 )  
 )  
\_\_\_\_\_ )

Bar No. \_\_\_\_\_  
SUBPOENA or SUBPOENA  
DUCES TECUM

STATE OF ARIZONA

TO: \_\_\_\_\_ (Name of Witness)

You are hereby directed to appear and attend before (Bar Counsel) (Probable Cause Panelist) of the State Bar of Arizona (Hearing Officer No. ) of the Supreme Court of Arizona, at (address), in (city), \_\_\_\_\_ County on (day), \_\_\_\_ (date) \_\_\_\_\_, 20 \_\_\_\_, at the hour of \_\_\_\_ o'clock \_\_\_\_ .m., then and there to testify in the above entitled matter.

(If the production of books, etc., is desired, add "and to bring with you the following:" and describe the same).

BE WARNED THAT for failure to appear and attend as herein required, you will be deemed to be in contempt and answerable in court as provided by operation of law.

By order of (the Probable Cause Panelist) of the State Bar of Arizona (Hearing Officer No.) (Disciplinary Clerk) of the Supreme Court of Arizona.

Issued on \_\_\_\_\_, 20 \_\_\_\_ at \_\_\_\_\_, Arizona.

(Name)  
(Hearing Officer)  
(Probable Cause Panelist)  
(Disciplinary Clerk)  
Whose Address is

\_\_\_\_\_, Arizona

2. The subpoena may, in the alternative, require the person to whom it is directed to make written answer to written interrogatories to be attached thereto. The answers shall be made under oath, signed by the witness, and filed within the time and at the place therein set forth. Such subpoena shall be in substantially the following form:

BEFORE A HEARING OFFICER

(HEARING OFFICER NO. \_\_\_\_\_)  
(THE PROBABLE CAUSE PANELIST)

In the Matter of a Member )  
of the State Bar of Arizona )  
 )  
 )  
\_\_\_\_\_ )

Bar No. \_\_\_\_\_  
SUBPOENA UPON  
WRITTEN INTERROGATORIES  
STATE OF ARIZONA

TO: \_\_\_\_\_ (Name of Witness)

You are hereby directed to make written answers under oath, signed by you, to the written interrogatories (questions) attached hereto, and to file such answers with the Disciplinary Clerk at (address), in the city of Phoenix, Arizona 85004, on or before \_\_\_\_\_, 20\_\_\_\_.

(The remainder of this subpoena shall be the same as a regular subpoena.)

**(j) Informal Request for Information.** When a lawyer has failed to comply with any request for information made pursuant to these rules for more than twenty (20) days, bar counsel may notify the lawyer that failure to so comply within ten (10) days may necessitate the taking of the deposition of the lawyer pursuant to subpoena.

1. *Venue.* [No proposed changes in text.]

2. *Imposition of Costs.* When a lawyer's failure to cooperate results in a deposition being conducted pursuant to the preceding subsection (h) (1), the lawyer shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, ~~court~~ certified reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the discipline proceeding. Upon application of chief bar counsel to a panelist, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the lawyer ten (10) days to respond, the panelist shall, by order, assess such costs as appear appropriate against the lawyer. Commission review of an order assessing costs under this rule may be had.

3. *Attorney-Client Privilege.* [No proposed changes in text.]

**(k) – (l)** [No proposed changes in text.]

**Rule 48. Rules of Construction**

**(a)-(k)** [No proposed change to text.]



**(l) Immunity from Civil Suit.** Communications to the court, state bar, commission, hearing committees or hearing officers, mediators, the client protection fund, the peer review committee, the fee arbitration program, the committee on the Rules of Professional Conduct, monitors of the Member Assistance or Law Office Management Assistance Programs, probable cause panelists, ~~or~~ state bar staff or supreme court staff relating to lawyer misconduct, lack of professionalism or disability and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Members of the board, commission, hearing committees or hearing officers, mediators, the peer review committee, client protection fund trustees and staff, fee arbitration committee arbitrators and staff, the ethics committee, monitors of the Member Assistance or Law Office Management Assistance Programs, probable cause panelists, state bar staff and supreme court staff shall be immune from suit for any conduct in the course of their official duties.

**(m)** [No proposed change in text.]

## **Rule 50. Hearing Officers**

**(a) Appointment of Volunteer Hearing Officers.** The court, upon recommendation of the commission, may appoint a lawyer who has been an active or judicial member for at least seven (7) years to serve as a volunteer hearing officer. A volunteer hearing officer may be terminated, at any time, by the court. If a vacancy occurs in a volunteer hearing officer position, the vacancy shall be filled in the manner provided for the original appointment.

**(b) Terms of Office of Volunteer Hearing Officers.** Volunteer hearing ~~Hearing~~ officers shall be appointed for three (3) year terms. A volunteer hearing officer may serve consecutive terms at the court's discretion. A volunteer hearing officer whose term has expired may continue to serve until the conclusion of any proceeding commenced prior to the expiration of the term, and decision thereon, and until a successor is appointed.

**(c) Paid Hearing Officers.** The court may appoint a lawyer who has been an active or a judicial member for at least seven (7) years to serve as a paid hearing officer. The appointment shall be effective until the court determines the services of the paid hearing officer are no longer needed.

**(e) (d) Powers and Duties.** Volunteer and paid hearing ~~Hearing~~ officers shall have the following powers and duties:

1. Hearing officers shall have statewide jurisdiction over proceedings on complaints of misconduct, applications for reinstatement, petitions for transfer to and from disability inactive status, and any other matters designated by the court, including contempt proceedings, upon assignment by the disciplinary clerk.

2. Hearing officers shall prepare findings of fact, conclusions of law, and issue orders consistent with these rules and, in appropriate cases, prepare and forward to the commission

findings, conclusions and recommendations, together with the record.

3. Hearing officers shall impose discipline as provided in these rules. Hearing officers shall sign their own orders.

4. Hearing officers shall file with the disciplinary clerk the originals of all documents and exhibits received or created that are part of the record.

**(d) (e) Change of Hearing Officer**

1. *Change for Cause.*

A. Procedure. Upon motion and affidavit of a party and for good cause shown, or at the request of any hearing officer or on its own motion, the commission, through its chair or designee, may order the removal or replacement of the assigned hearing officer ~~and shall appoint a new hearing officer to consider a particular matter.~~

B. [No proposed changes in text.]

C. Assignment. ~~At the request of any hearing officer or on its own motion,~~ Upon the order of the commission chair or designee of the removal or replacement of the assigned hearing officer, the chair disciplinary clerk commission chair shall may assign another hearing officer from the active hearing officer membership list another hearing officer to act in place of the hearing officer being removed or replaced in a particular discipline, disability, or reinstatement matter.

2. *Change as a Matter of Right.*

A. Procedure. Each party is entitled as a matter of right to one (1) change of hearing officer. To exercise this right, a party shall file a "Notice of Transfer," which shall state the name of the hearing officer to be removed ~~and it shall neither specify grounds nor be accompanied by an affidavit.~~ The notice shall also include an avowal that the request in made in good faith and not:

- (i) For the purposes of delay;
- (ii) To interfere with the reasonable case management practices of the hearing officer;
- (iii) To remove a hearing officer for reasons of race, gender or religious affiliation;
- (iv) For the purposes of using the rule against a particular hearing officer in a blanket fashion by the state bar, respondent or respondent's counsel;
- (v) To obtain a more convenient geographical location; or
- (vi) To obtain advantage or avoid disadvantage in connection with an agreement or upon imposition of a sanction.

The avowal shall be made in the attorney's capacity as an officer of the court.

B. – D. [No proposed changes in text.]

**(e) (f) Expense Payments.** Volunteer hearing Hearing officers will receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties, as permitted by law. Paid hearing officers shall receive compensation for their services at a rate determined by the Administrative Director of the Courts and in accordance with the approved employee compensation schedule of the Administrative Office of the Courts. Paid hearing officers shall also be reimbursed for their travel and other expenses incidental to the performance of their duties, as permitted by law.

Comment

The right to change of hearing officer provisions are modeled after Rules of Criminal Procedure 10.2 and are intended to preserve the rights of the party to request a new hearing officer while also addressing abuses of the rule, including “blanket challenges” of hearing officers. A lawyer who files a notice of change of hearing officer in any of the circumstances enumerated in Rule 50(e)(2) would be in violation of the rule and subject to discipline for violating the lawyer’s professional responsibilities.

**Rule 56. Discipline by Consent**

**(a) Consent to Discipline.** [No proposed changes in text.]

**(b) Procedure.** A tender of admissions and agreement for discipline by consent (agreement), signed by respondent, respondent's counsel, if any, and bar counsel, shall be filed with the disciplinary clerk and served on the assigned hearing officer not less than three (3) days prior to the formal hearing on the merits, unless the form of discipline includes disbarment. If an agreement is reached during the course of the hearing on the merits, the formal agreement shall be filed by the parties within ten (10) days or the hearing shall commence not more than thirty (30) days thereafter. The hearing officer, in the hearing officer's discretion or upon request, ~~may~~ shall hold an evidentiary hearing within thirty (30) days of the filing of the agreement, to establish a factual basis for the agreement and may accept, reject, or order the agreement modified. All agreements must be accompanied by a joint memorandum in support of agreement for discipline by consent ("joint memorandum"), as set forth below. Exhibits, such as a record of criminal conviction, pre-sentence reports, medical records, public records, and any other records in support of the agreement or the sanction to be imposed shall be filed with the agreement and joint memorandum, in addition to a statement of costs and expenses on admitted counts. Prior to the submission of the agreement, joint memorandum and exhibits, the parties shall meet and to the extent possible, reduce the volume of exhibits and witnesses and agree to those exhibits that can be admitted by stipulation. This meeting may be held telephonically. The agreement shall state that the agreement and joint memorandum have been approved as to form and content by the chief bar counsel or chief bar counsel's designee.

**(c) – (e)** [No proposed changes in text.]

**(f) Hearing Officer Report.** Within thirty (30) days of the ~~submission of an agreement and joint memorandum or the conclusion of an evidentiary hearing, if one is held, and~~ receipt of the certified transcript, the hearing officer shall file a report with the disciplinary clerk and the disciplinary clerk shall serve a copy on the parties. The report shall recommend acceptance,

rejection or modification of the proposed agreement and shall address the proportionality of the sanction to be imposed. The report may incorporate all or portions of the consent documents.

1. *Acceptance.* If the agreement is accepted by the hearing officer it shall be final unless the sanction to be imposed includes disbarment, suspension or censure, whereupon the agreement, joint memorandum, hearing officer's report and any exhibits will be forwarded to the commission for review, as set forth in Rule 58. The provisions of Rule 57(l) providing for appeal of the hearing officer's report do not apply.

2. *Modification.* The hearing officer may recommend the modification of an agreement and shall clearly state the nature and substance of the proposed modifications and give the parties not less than ten (10) or more than thirty (30) days to execute the proposed modifications and file the modified agreement and joint memorandum for consideration. If the parties fail to submit a modified agreement within the time provided, and no request for additional time has been submitted, the agreement shall be deemed rejected. For good cause shown, the hearing officer may grant one thirty (30) day extension of time to file the modified agreement, so long as the modified agreement is filed within one hundred and twenty (120) ~~fifty (150)~~ days of the filing of the complaint.

3. *Rejection.* [No proposed changes in text.]

**(g) Disbarment by Consent.** The following provisions shall apply to admissions that constitute disbarment by consent:

1. Any member against whom charges have been made or a formal complaint filed may voluntarily consent to disbarment by filing with the disciplinary clerk, in duplicate original, a written, verified consent to disbarment in the form prescribed in these rules or as otherwise approved by the court. The consent to disbarment shall be effective only upon acceptance by the court. The general form of consent to disbarment shall be as follows:

IN THE SUPREME COURT OF THE  
STATE OF ARIZONA

In re:	)	No. SB
(NAME OF MEMBER), a	)	Bar No.
member of the State Bar of	)	
Arizona,	)	CONSENT TO
Respondent	)	DISBARMENT
_____	)	

I, (name of lawyer), residing at (city and street address), voluntarily consent to disbarment ~~as a member of the State Bar of~~ from the practice of law in Arizona and consent to the removal of my name from the roster of those permitted to practice before this court, and from the roster of the State Bar of Arizona.

I acknowledge that (charges) a formal complaint have/has been (made) filed against me. I have read the (charges) complaint, and the charges there made against me. I further acknowledge that I cannot successfully defend the charges made against me. I do not desire to contest or defend against the charges, but wish to consent to disbarment. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to disbarment freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to discipline, disability, resignation and reinstatement, and I understand that any future application by me for admission or reinstatement ~~as a member of the State Bar of~~ to the practice of law in Arizona will be treated as an application by a member who has been disbarred for professional misconduct, as set forth in the (charges) complaint (made) filed against me. The misconduct of which I am accused is described in the (charges) complaint bearing the number referenced above, a copy of which is attached hereto.

DONE AT \_\_\_\_\_, Arizona on \_\_\_\_\_, 20 \_\_\_\_.

(Signature)

\_\_\_\_\_  
(Name)

(Verification)

2. – 3. [No proposed changes in text.]

### **Rule 57. Formal Proceedings**

**(a) Complaint.** Formal discipline proceedings shall be instituted by the state bar filing a complaint or agreement for discipline by consent with the disciplinary clerk. The state bar shall file the complaint or agreement within sixty (60) days from the probable cause order. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

1. [No proposed changes in text.]

2. *Service of Complaint.* The complaint shall be served upon the respondent within ~~ten (10)~~ five (5) days of filing and in the manner set forth in Rule 47(c), unless for good cause, the state bar cannot complete service within five (5) days. Within ten (10) days after ~~Upon~~ receipt of the complaint and notice that the state bar has served the complaint upon the respondent, the disciplinary clerk shall assign the matter to a hearing officer and ~~advise~~ shall issue the Notice of Assignment of Hearing Officer. The notice shall include the date and time of the initial case management conference, as set by the hearing officer and shall include information advising the respondent of respondent's right to retain counsel.

**(b)** [No proposed changes in text.]

**(c) Initial Case Management Conference.** Within ten (10) days after the time for filing an answer has expired, the hearing officer shall ~~contact and~~ hold a mandatory initial case management conference for purposes of establishing the discovery schedule, as well as scheduling the hearing on the merits and all other prehearing conferences. Bar counsel and respondent, and respondent's attorney, if any, shall appear for the initial case management conference, which may be telephonic.

**(d) Default Procedure; Aggravation/Mitigation Hearing.** If respondent fails to answer within the prescribed time, the disciplinary clerk shall, within ten (10) days thereafter, file and serve a copy of the notice of default upon respondent and bar counsel. A default shall not be entered if the respondent files an answer or otherwise defends prior to the expiration of ten (10) days from the service of the notice of default. Otherwise, a default shall be entered by the disciplinary clerk ten (10) days after the notice of default is filed and served and the allegations in the complaint shall be deemed admitted. Entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c), Ariz.R.Civ.P. The hearing officer shall schedule an aggravation/ mitigation hearing which shall be held and concluded within thirty (30) days of the entry of default.

**(e) – (g)** [No proposed changes in text.]

**(h) Prehearing Conference.** At the discretion of the hearing officer, or upon request of either party, one or more prehearing conferences may be held before the assigned hearing officer of the purpose of determining case status, establishing a hearing schedule, disposing of outstanding procedural matters or otherwise narrowing the issues to be presented at the hearing on the merits. If the hearing officer intends to hear oral argument or otherwise rule on substantive motions, the parties shall be so advised in advance of the meeting. Regardless of whether the hearing officer holds a prehearing conference, the parties shall meet and to the extent possible, reduce the volume of exhibits and witnesses and agree to those exhibits that can be admitted by stipulation.

**(i) Joint Prehearing Statements.** [No proposed changes in text].

**(j) Hearing.**

1. *Time Limits.* The hearing officer shall hold and complete the hearing on the merits within one hundred and twenty (120) ~~thirty (150)~~ days of the filing of the complaint unless the hearing officer determines that in the interest of justice, the matter cannot be heard within one hundred and twenty (120) days of the filing of the complaint or if the case is designated as complex, pursuant to paragraph (2) of this rule chair of the commission, or the chair's designee, upon motion by one of the parties or the hearing officer, designates the case a complex case that in the interests of justice, cannot be heard within one hundred and fifty (150) days from the filing of the complaint. If the hearing officer determines additional time beyond the one hundred and twenty (120) days is required, the hearing officer shall identify the reasons why additional time is required and shall hold and complete the hearing within one hundred and fifty (150) days from the filing of the complaint. If a case requires multiple days of hearing, the hearing shall be scheduled and held to ensure the shortest number of

days elapse between the days of hearing and wherever possible, the hearing should be held on consecutive days except in extraordinary circumstances. The hearing date may be continued by the hearing officer upon request or stipulation of the parties, or upon the hearing officer's own motion, for good cause shown. Continuances may be granted for no more than thirty (30) days at a time, and may not extend the hearing on the merits beyond one hundred and (150) days from the filing of the complaint. Upon a showing of extraordinary circumstances, the chair of the commission, or the chair's designee, may authorize additional time, up to thirty (30) days, to hold and complete the hearing upon motion of the parties or the hearing officer. If it appears to the chair of the commission, or to the chair's designee, that the hearing cannot reasonably be held and completed within the stated time limits, the chair or designee shall notify the court and request that additional time be granted.

## *2. Designation as Complex Case.*

A. Definition. A “complex” case is one ~~that~~ where, in the interests of justice, the hearing cannot be heard concluded within one hundred fifty (150) days of the filing of the complaint.

B. Procedure for Requesting Designation. At any time prior to the initial case management conference, either the state bar or the respondent may file a motion requesting the chair of the commission or designee to designate the case as a complex case. The motion shall identify the factors of paragraph (C) of this rule that apply to the case and shall suggest new timeframes for conclusion of the hearing and the hearing officer report. The state bar or respondent shall serve a copy of the motion on the other party and the hearing officer assigned to the case. The parties may file a response in support or opposition to the motion. The hearing officer shall file a recommendation with the commission chair or designee as to whether the case should be designated as complex and suggested timeframes for the conclusion of the hearing and hearing officer report.

C. [No proposed changes in text.]

D. Decision by Commission. The commission chair or designee shall issue its decision in writing and shall file the decision with the disciplinary clerk who shall forward the decision to the parties and the hearing officer. If the commission chair or designee designates the case as complex, the order shall include the factors supporting the decision and new timeframes for the conclusion of the hearing and submission of the hearing officer report. The decision of the commission chair or designee is final and is not subject to reconsideration. If it appears to the commission chair or designee the hearing cannot reasonably be held and concluded within one hundred and eighty (180) days and the hearing officer report cannot be completed and filed within sixty (60) days of the conclusion of the hearing, the chair or designee shall notify the court the case has been designated as complex and request the court grant additional time for the hearing and hearing officer report.

~~D.~~ E. Initial Case Management Conference. Within fifteen (15) days following the date on which the commission chair or designee designates a case as a complex case, the assigned hearing officer shall ~~contact the parties and~~ conduct a case management conference for purposes of scheduling the hearing on the merits and all other prehearing conferences, and for consideration of any other orders necessary to ensure that the hearing proceeds on the date scheduled for a hearing on the merits.

3. *Venue.* The hearing shall be held in Maricopa County unless, upon a showing of good cause, the hearing officer determines the principles of forum non conveniens apply and the hearing needs to be held in the county in which respondent resides or maintains an office for the practice of law.,~~provided that the principles of forum non conveniens apply.~~

4. *Procedure.* [No proposed changes in text.].

**(k) Report.** Within thirty (30) days after receiving the certified transcript, the hearing officer shall prepare and file with the disciplinary clerk a written report containing findings of fact, conclusions of law and recommendations regarding discipline, together with a record of the proceedings. ~~The hearing officer~~ disciplinary clerk shall serve a copy of the report on respondent and on bar counsel of record. For good cause shown, a hearing officer may request that the chair of the commission, or the chair's designee, grant an extension of time within which to file the report. If no appeal is timely filed, the decision of the hearing officer is final as to any dismissal, diversion, informal reprimand, assessment of costs and expenses, probation and restitution, if not part of a sanction which includes disbarment, suspension or censure.

**(l) Appeal.** Respondent and the state bar shall have ten (10) days after service of the hearing officer's report to appeal the recommendations of the hearing officer by filing and serving a notice of appeal and request for oral argument, if desired, with the disciplinary clerk. Failure of a party to appeal within the time provided shall constitute consent to the discipline recommended by the hearing officer. There is no right to appeal if the hearing officer report recommends acceptance of a Tender of Admissions and Joint Memorandum in Support of Agreement for Discipline by Consent pursuant to Rule 56.

#### Comment

Clarification is provided regarding appeal of the hearing officer's report in a Discipline by Consent case, to avoid any confusion with Rule 56.

### **Rule 65. Reinstatement; Application and Proceedings**

**(a) Application for Reinstatement.** Except as may otherwise be provided in Rules 63(g) and 64, a lawyer may be reinstated to active membership only as provided in this rule.

1. *Application.* The lawyer shall file with the disciplinary clerk an application for reinstatement, in the form of a motion, verified by the lawyer, and accompanied by the appropriate fees and proofs of payment required by paragraph (a)(3) of this rule. The



disciplinary clerk shall reject the application for filing if the application is not accompanied by the filing fee required by paragraph (a)(3)(A) of this rule. The lawyer shall file with the application for reinstatement a written release or authorization to the hearing officer to obtain documents or information in the possession of any third party, including a physician, psychologist or psychiatrist. The application shall set forth fully and accurately the following information concerning the period of rehabilitation which, for the purpose of the application, shall be the time between the date of disbarment or suspension and the date of filing the application:

A. – C. [No proposed changes in text.]

D. a detailed description of the lawyer's occupation during the period of rehabilitation, with names and addresses of all partners, associates in business and employers, if any, and dates and duration of all such relations and employment;

E. – G. [No proposed changes in text.]

H. a statement showing all financial obligations of the applicant at date of filing of the application, together with the dates when such obligations were incurred, and the names and addresses of all creditors;

I. – L. [No proposed changes in text.]

M. a concise statement of facts claimed to support readmission to the practice of law in Arizona ~~state bar~~.

2. *Documentation Supporting Application.* In addition to the application, the lawyer shall file copies of the judgment of conviction, findings and judgment of the trial court and opinions of the appellate courts, or findings and recommendations of the hearing officer and commission, and decision, judgment or order of this court, as appropriate, upon which the lawyer was suspended or disbarred. The lawyer shall also submit copies of all prior applications for reinstatement filed on his or her behalf, including all findings, decisions or orders entered and will furnish further information as requested by the hearing officer or commission.

3. *Required Fees and Payments.*

A. Every applicant for reinstatement shall pay ~~an~~ a nonrefundable application fee, as set by the court, to the disciplinary clerk.

B. Cost of Investigation. ~~As a prerequisite to filing and before investigation of the application, the~~ The applicant shall pay in full the estimated cost of the investigation and shall submit verification ~~Verification~~ of such payment in the form of an affidavit from the Lawyer Regulation Records Manager ~~shall be submitted~~ with the application. If the lawyer's payment is less than the actual cost of investigation, the lawyer shall be required to satisfy such deficiency before the application is reviewed

by the court. Any excess costs advanced shall be promptly refunded to the lawyer. Any subsequent costs or expenses incurred shall be paid before the lawyer is reinstated by the court.

C. – D. [No proposed changes in text.]

4. – 5. [No proposed changes in text.]

6. Incomplete Application. The State Bar may file a motion to dismiss an application that is incomplete because it does not comply with the requirements of this rule.

**(b) Reinstatement Proceedings.**

1. *Hearing.*

A. *Assignment of Hearing Officer; Service on Bar Counsel.* ~~Upon~~ Within ten (10) days of receipt of the application, the disciplinary clerk shall ~~promptly~~ assign the matter and forward the application to a hearing officer, and serve a copy on bar counsel.

B. *Notice of Hearing; Continuance.* The hearing officer shall hold and complete a hearing within one hundred twenty (120) days of the filing of the application and shall notify the parties of the time and date thereof. Upon request of a party or upon the hearing officer's own motion, for good cause shown, the hearing officer may continue the hearing. Continuances may be granted for no more than thirty (30) days at a time, and may not extend the hearing beyond one hundred and twenty (120) days from the filing of the application. Upon a showing of extraordinary circumstances and motion of the parties or the hearing officer, the chair of the commission, or the chair's designee, may authorize additional time, up to thirty (30) days, to hold and complete the hearing. If it appears to the chair of the commission, or to the chair's designee, that the hearing cannot reasonably be held and completed with the stated time limits, the chair or designee shall notify the court and request that additional time be granted.

C.- D. [No proposed changes to text.]

2. *Burden of Proof.* [No proposed changes in text.]

3. *Hearing Officer Report.* Within thirty (30) days after receiving the certified transcript, the hearing officer shall file a report containing findings of fact and a recommendation concerning reinstatement with the ~~commission, disciplinary clerk~~ which shall include together with a record of the proceedings. ~~The hearing officer disciplinary clerk~~ shall serve a copy of the report on the parties. For good cause shown, a hearing officer may request that the chair of the commission, or the chair's designee, grant an extension of time within which to file the report.

4. *Commission Review.* The commission shall ~~promptly~~ review the report of the hearing officer and the record, and shall calendar the matter for ~~oral argument before review by~~ the commission. A matter involving a lawyer who is applying for reinstatement pursuant to Rule 64(d) or (e), after disbarment or suspension by the court, shall be calendared for oral argument before the commission. A matter involving a lawyer who is applying for reinstatement pursuant to Rule 64(f), after summary suspension by the Board of Governors, does not require oral argument by the commission. Upon request of either party or on the commission's own motion, the matter may be scheduled for oral argument.

5. *Commission Report.* Within thirty (30) days after review of the application by the commission, the ~~The~~ ~~commission will thereafter~~ shall prepare and file with the disciplinary clerk ~~court its own~~ a written report containing findings of fact and recommendation concerning reinstatement, together with the record. ~~The commission~~ disciplinary clerk shall serve a copy of the report on the parties and on the hearing officer.

~~5.~~ 6. *Court Review.* The provisions of Rule 59 shall apply. The court shall ~~promptly~~ review the report of the commission and may calendar the matter for argument before the court. If the court finds the lawyer failed to establish qualification for reinstatement, the application shall be dismissed. If the court finds the applicant is qualified to practice law, the court shall reinstate the lawyer, provided that the court conditions reinstatement upon the payment of all or part of the costs of the proceedings, upon restitution and upon proof of competency, including certification by the ~~bar examiners~~ Supreme Court Committee on Examinations of the successful completion of an examination for admission to practice administered subsequent to the suspension or disbarment when examination is required by these rules.

## **Rule 72. Notice to Clients, Adverse Parties and Other Counsel**

(a) – (d) [No proposed changes in text.]

(e) **Affidavit Filed with Commission and Court.** Within ten (10) days after the effective date of the judgment of disbarment or suspension, or transfer to disability inactive status, or his or her resignation, respondent shall file with the state bar, commission and ~~with the~~ court an affidavit showing:

1. Respondent has fully complied with the provisions of the order and with these rules;
2. All other state, federal and administrative jurisdictions in which respondent is admitted to practice;
3. Respondent's residence and other addresses where communications may thereafter be directed and that;

4. Respondent has served a copy of such affidavit upon bar counsel.

**(f) –(g)**[No proposed changes in text.]